

1996—Subsec. (b)(2). Pub. L. 104-134 added par. (2) and struck out heading and text of former par. (2). Text read as follows: “The annual assessment shall be payable semiannually on September 1 and March 1 of the year for which the assessment is made.”

Statutory Notes and Related Subsidiaries

NON-REDUCTION OF FIRST ANNUAL ASSESSMENT

Pub. L. 103-124, title II, Oct. 28, 1993, 107 Stat. 1290, provided that notwithstanding the last sentence of subsec. (e) of this section, the amount of this first annual assessment was not to be reduced by any part of the amount of the initial special assessment under subsec. (e).

§ 4517. Examinations

(a) Annual examination

The Director shall annually conduct an on-site examination under this section of each regulated entity to determine the condition of the regulated entity for the purpose of ensuring its financial safety and soundness.

(b) Other examinations

In addition to annual examinations under subsection (a), the Director may conduct an examination under this section of a regulated entity whenever the Director determines that an examination is necessary or appropriate.

(c) Examiners

The Director shall appoint examiners to conduct examinations under this section. The Director may contract with the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, or the Federal Deposit Insurance Corporation for the services of examiners to conduct examinations under this section. The Director shall reimburse such agencies for any costs of providing examiners from amounts available in the Federal Housing Enterprises Oversight Fund.

(d) Inspector General

There shall be within the Agency an Inspector General, who shall be appointed in accordance with section 3(a) of the Inspector General Act of 1978.

(e) Law applicable to examiners

The Director and each examiner shall have the same authority and each examiner shall be subject to the same disclosures, prohibitions, obligations, and penalties as are applicable to examiners employed by the Federal Reserve banks.

(f) Technical experts

The Director may obtain the services of any technical experts the Director considers appropriate to provide temporary technical assistance relating to examinations to the Director, officers, and employees of the Office. The Director shall describe, in the record of each examination, the nature and extent of any such temporary technical assistance.

(g) Oaths, evidence, and subpoena powers

In connection with examinations under this section, the Director shall have the authority provided under section 4641 of this title.

(h) Appointment of accountants, economists, and examiners

(1) Applicability

This section shall apply with respect to any position of examiner, accountant, economist,

and specialist in financial markets and in technology at the Agency, with respect to supervision and regulation of the regulated entities, that is in the competitive service.

(2) Appointment authority

The Director may appoint candidates to any position described in paragraph (1)—

(A) in accordance with the statutes, rules, and regulations governing appointments in the excepted service; and

(B) notwithstanding any statutes, rules, and regulations governing appointments in the competitive service.

(i) Ombudsman

The Director shall establish, by regulation, an Office of the Ombudsman within the Agency, which shall be responsible for considering complaints and appeals, from any regulated entity and any person that has a business relationship with a regulated entity, regarding any matter relating to the regulation and supervision of such regulated entity by the Agency. The regulation issued by the Director under this subsection shall specify the authority and duties of the Office of the Ombudsman.

(Pub. L. 102-550, title XIII, §1317, Oct. 28, 1992, 106 Stat. 3949; Pub. L. 110-289, div. A, title I, §§1105(a), (b), (e), 1153(b)(1)(A), July 30, 2008, 122 Stat. 2667, 2668, 2774; Pub. L. 111-203, title III, §365(2), July 21, 2010, 124 Stat. 1555.)

Editorial Notes

REFERENCES IN TEXT

Section 3(a) of the Inspector General Act of 1978, referred to in subsec. (d), is section 3(a) of Pub. L. 95-452, which is set out in the Appendix to Title 5, Government Organization and Employees.

AMENDMENTS

2010—Subsec. (c). Pub. L. 111-203 substituted “or the Federal Deposit Insurance Corporation” for “the Federal Deposit Insurance Corporation, or the Director of the Office of Thrift Supervision”.

2008—Subsec. (a). Pub. L. 110-289, §1105(a)(1), substituted “regulated entity” for “enterprise” in two places.

Subsec. (b). Pub. L. 110-289, §1105(a)(2), inserted “of a regulated entity” after “under this section” and substituted “or appropriate” for “to determine the condition of an enterprise for the purpose of ensuring its financial safety and soundness”.

Subsec. (c). Pub. L. 110-289, §1105(a)(3), inserted “to conduct examinations under this section” after “services of examiners”.

Subsecs. (d) to (f). Pub. L. 110-289, §1105(a)(4), (5), added subsec. (d) and redesignated former subsecs. (d) and (e) as (e) and (f), respectively. Former subsec. (f) redesignated (g).

Subsec. (g). Pub. L. 110-289, §1153(b)(1)(A), which directed technical amendment in subsec. (f) to reference in original act which appears in text as reference to section 4641 of this title, was executed by making the amendment in subsec. (g), to reflect the probable intent of Congress and the redesignation of subsec. (f) as (g) by Pub. L. 110-289, §1105(a)(4). See below.

Pub. L. 110-289, §1105(a)(4), redesignated subsec. (f) as (g).

Subsec. (h). Pub. L. 110-289, §1105(b), added subsec. (h).

Subsec. (i). Pub. L. 110-289, §1105(e), added subsec. (i).

Statutory Notes and Related Subsidiaries**EFFECTIVE DATE OF 2010 AMENDMENT**

Amendment by Pub. L. 111-203 effective on the transfer date, see section 351 of Pub. L. 111-203, set out as a note under section 906 of Title 2, The Congress.

§ 4518. Prohibition and withholding of executive compensation**(a) In general**

The Director shall prohibit the regulated entities from providing compensation to any executive officer of the regulated entity that is not reasonable and comparable with compensation for employment in other similar businesses (including other publicly held financial institutions or major financial services companies) involving similar duties and responsibilities.

(b) Factors

In making any determination under subsection (a), the Director may take into consideration any factors the Director considers relevant, including any wrongdoing on the part of the executive officer, and such wrongdoing shall include any fraudulent act or omission, breach of trust or fiduciary duty, violation of law, rule, regulation, order, or written agreement, and insider abuse with respect to the regulated entity. The approval of an agreement or contract pursuant to section 1723a(d)(3)(B) of this title or section 1452(h)(2) of this title shall not preclude the Director from making any subsequent determination under subsection (a).

(c) Withholding of compensation

In carrying out subsection (a), the Director may require a regulated entity to withhold any payment, transfer, or disbursement of compensation to an executive officer, or to place such compensation in an escrow account, during the review of the reasonableness and comparability of compensation.

(d) Prohibition of setting compensation

In carrying out subsection (a), the Director may not prescribe or set a specific level or range of compensation.

(e) Authority to regulate or prohibit certain forms of benefits to affiliated parties**(1) Golden parachutes and indemnification payments**

The Director may prohibit or limit, by regulation or order, any golden parachute payment or indemnification payment.

(2) Factors to be taken into account

The Director shall prescribe, by regulation, the factors to be considered by the Director in taking any action pursuant to paragraph (1), which may include such factors as—

(A) whether there is a reasonable basis to believe that the affiliated party has committed any fraudulent act or omission, breach of trust or fiduciary duty, or insider abuse with regard to the regulated entity that has had a material effect on the financial condition of the regulated entity;

(B) whether there is a reasonable basis to believe that the affiliated party is substantially responsible for the insolvency of the

regulated entity, the appointment of a conservator or receiver for the regulated entity, or the troubled condition of the regulated entity (as defined in regulations prescribed by the Director);

(C) whether there is a reasonable basis to believe that the affiliated party has materially violated any applicable provision of Federal or State law or regulation that has had a material effect on the financial condition of the regulated entity;

(D) whether the affiliated party was in a position of managerial or fiduciary responsibility; and

(E) the length of time that the party was affiliated with the regulated entity, and the degree to which—

(i) the payment reasonably reflects compensation earned over the period of employment; and

(ii) the compensation involved represents a reasonable payment for services rendered.

(3) Certain payments prohibited

No regulated entity may prepay the salary or any liability or legal expense of any affiliated party if such payment is made—

(A) in contemplation of the insolvency of such regulated entity, or after the commission of an act of insolvency; and

(B) with a view to, or having the result of—

(i) preventing the proper application of the assets of the regulated entity to creditors; or

(ii) preferring one creditor over another.

(4) Golden parachute payment defined**(A) In general**

For purposes of this subsection, the term “golden parachute payment” means any payment (or any agreement to make any payment) in the nature of compensation by any regulated entity for the benefit of any affiliated party pursuant to an obligation of such regulated entity that—

(i) is contingent on the termination of such party's affiliation with the regulated entity; and

(ii) is received on or after the date on which—

(I) the regulated entity became insolvent;

(II) any conservator or receiver is appointed for such regulated entity; or

(III) the Director determines that the regulated entity is in a troubled condition (as defined in the regulations of the Director).

(B) Certain payments in contemplation of an event

Any payment which would be a golden parachute payment but for the fact that such payment was made before the date referred to in subparagraph (A)(ii) shall be treated as a golden parachute payment if the payment was made in contemplation of the occurrence of an event described in any subclause of such subparagraph.